

Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

MM Docket No. 94-51

In the Matter of:

Amendment of Section 73.202(b),
Table of Allotments,
FM Broadcast Stations.
(Mamou and Jonesville, LA)

RM-8466

To: Acting Chief, Allocations Branch,
Mass Media Bureau

DOCKET FILE COPY ORIGINAL

PETITION FOR RECONSIDERATION

Simla B. Ellis d/b/a SoTo Broadcasting
("Ellis"), by her attorneys, herewith petitions for
reconsideration of the Report and Order in this
proceeding, DA 94-1062 (adopted September 27, 1994, and
released October 4, 1994), which dismissed Ellis'
petition for rule making and terminated this
proceeding. In support, the following is shown:

1. Ellis is the permittee of new FM
broadcast station KAHK, Channel 266A, Mamou, Louisiana,
(BPH-930528MG). She petitioned for rulemaking to
upgrade the allotment from Channel 266A to Channel
266C3 in order to improve service to Mamou and the
surrounding area.

2. On June 3, 1994, the Acting Chief,
Allocations Branch ("Chief") adopted a "Notice of

Proposed Rule Making" ("NPRM") in this proceeding,¹ in which he found that the public interest would be served by proposing the substitution of Channel 266C3 for Channel 266A at Mamou, "since it could provide the community with a wide coverage area FM service." The Chief found that the Class C3 channel could be allotted to Mamou consistent with the FCC's minimum distance separation requirements, provided Channel 286A were substituted for Channel 266A at Jonesville, LA, and further provided that a site restriction were imposed on the Channel 266C3, Mamou allotment. Finally, the Chief proposed to modify Ellis' construction permit to specify operation on Channel 266C3 at Mamou. The Chief ordered the filing of comments on or before August 9, 1994, and the filing of reply comments on or before August 24, 1994. Id. at 2764.

3. The Appendix to the NPRM directed Ellis to restate her "present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly." NPRM, Appendix, No. 2, Showings Required. Id. at 2765. Furthermore, footnote one of the NPRM said as follows:

¹ DA 94-591, 9 FCC Rcd. 2764 (released June 16, 1994), 59 Fed. Reg. 32177 (published June 22, 1994). The complete text of the Federal Register entry is attached as Attachment I.

Although petitioner's request indicates that the original copy of his proposal was signed by him, he failed to include an affidavit verifying that the statements contained in his petition were accurate to the best of his knowledge. Section 1.52 of the Commission's Rules requires that the original of any document filed with the Commission by a party not represented by counsel be signed and verified by the party and his/her address stated. In absence of such verification, the petition may be dismissed. Section 1.401(b) of the Commission's Rules concerning rule making proceedings places petitioners on notice that their proposal must conform with the requirements of Section 1.52 regarding subscription and verification. See also *Amendment of Sections 1.420 and 73.3584 of the Commission's Rules Concerning Abuses of the Commission's Processes*, 5 FCC Rcd. 3911, 3919, n. 41 (1990). Petitioner is requested to rectify this omission in his comments.

Id. at 2764, n. 1. In this case, Ellis was assisted by her husband, Charles F. Ellis, a broadcast technical consultant whose credentials are a matter of record with the Commission.²

4. In the Report and Order, the Chief noted:

Petitioner failed to file comments stating it [sic] intention to apply for Channel 266C3 if allotted to Mamou, Louisiana. As stated in the Notice, a showing of continuing interest is required before a channel will be allotted. It is the Commission's policy to refrain from making an allotment to a community absent an expression of interest. Therefore, we shall dismiss

² Ellis interprets the NPRM's use of masculine pronouns in footnote one as referring to her, and not to her husband.

petitioner's proposal to substitute Channel 266C3 for Channel 266A at Mamou, Louisiana.

Report and Order, Para. 2. Therefore, the Chief dismissed Ellis' petition for rule making and terminated the proceeding. Report and Order, Paras. 3 and 4.

5. Ellis was completely unaware of the NPRM. She was not served with a copy of the NPRM by the Commission. She did not receive a copy of the NPRM from any other source. She had no actual knowledge of the NPRM or its contents.

6. As to the Federal Register publication of the NPRM, it was a summary document, as shown in Attachment I, and provided no information to the reader that Ellis was obligated to file anything with the FCC. It contained no information, even by way of summary, of the contents and substance of either footnote 1 or the Appendix to the NPRM. Thus, even if Ellis is deemed to have knowledge of the Federal Register publication, although she had no actual notice of it, such knowledge would not have informed her of any obligation on her part to file comments on or before August 9, 1994.

7. Ellis was not aware of the obligation to file comments restating her intention to tender an application for modification of the construction permit for her Mamou, Louisiana, FM station or to address the

issues raised by footnote 1 of the NPRM. Ellis' failure to file comments was simply the result of lack of knowledge, and not from any disregard for FCC rules and procedures.

8. As the permittee of the FM broadcast station on Channel 266A at Mamou, Louisiana, Ellis has always had the intent to serve the public interest of the listeners in Mamou and the surrounding area. That intent to serve the public interest includes the technical service of the station. That intent was evidenced by the filing of the petition for rulemaking to upgrade the channel. That intent continues today by the filing of this petition for reconsideration, which contains the expression of her intent to upgrade her station.

9. Finally, Ellis notes that no one tendered comments, reply comments, a counter-proposal, or any other filing in MM Docket No. 94-51. Thus, no one is prejudiced by granting this petition for reconsideration, reinstating the proceeding and Ellis' petition, and amending the FM Table of Allotments as proposed by Ellis. FCC precedent is well-established that it will accept untimely expressions of interest, and amend the Table of Allotments to add a channel to a community, but only in the absence of a conflicting

proposal.³ In part, the theory is that it would be a waste of administrative resources to initiate a new proceeding. This is particularly so where, as here, the allotment in question is the only FM allotment in the community; it is a first local radio service, and at issue is the upgrade of an authorized radio station.

10. With regard to the subscription and verification of the petition for rule making, pursuant to Section 1.52 of the Rules and Regulations, Attachment II hereto is the text of the Engineering Statement of the petition, the Tables and Figures omitted as irrelevant and for the sake of brevity. Ellis signed that Statement.⁴ Implicit in affixing one's signature to any document is a ratification of the contents of that document. Nevertheless, as part of this petition for reconsideration, Ellis separately verifies the petition, not only as of the time it was

³ Gayles or Shreveport, LA, Docket No. 83-519, Mimeo No. 4060 (Released April 25, 1986); St. Johnsbury, VT, Docket No. 80-667, Mimeo No. 30686 (Released January 13, 1982); Santa Isabel, PR and Christiansted, VI, MM Docket No. 85-211, 2 FCC Rcd. 3454, 63 RR 2d 259 (MM Bur. 1987), review denied, 3 FCC Rcd. 2336, 64 RR 2d 1408 (1988), recon. den., 4 FCC Rcd. 3412, 66 RR 2d 804 (1989), aff'd. sub. nom., Amor Family Broadcasting Group v. FCC, 918 F.2d 960, 68 RR 2d 804 (DC Cir 1990); Camden and Rockland, ME, MM Docket No. 86-183, 3 FCC Rcd. 3621 (1988); Roland and Heavener, OK, MM Docket No. 87-393, 3 FCC Rcd. 2684 (1988).

⁴ Ellis' address is noted on each of the Tables -- her address being the same as her husband's and that of Ellis Engineering, and the one used in the NPRM.

tendered but also as of August 9, 1994, and as of the present.

WHEREFORE, Ellis requests that the Chief grant this Petition, reinstate this proceeding, reinstate Ellis' petition, substitute Channel 266C3 for Channel 266A at Mamou, LA., and modify Ellis' construction permit for a new FM broadcast station on Channel 266 at Mamou, LA, to specify operation on Channel 266C3.

Respectfully Submitted,

**SIMLA B. ELLIS d/b/a
SoTo BROADCASTING**

by *Harold K. McCombs, Jr.*
Harold K. McCombs, Jr.

Her Attorney

October 12, 1994

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ATTACHMENT I

47 CFR Part 73

[MM Docket No. 93-284; RM-8375]

Radio Broadcasting Services; Woodville, MS, and Clayton, LA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; denial.

SUMMARY: This document denies the petition for rule making filed by PDB Broadcasting, permittee of a new FM station, Channel 299A, Woodville, Mississippi, requesting the substitution of Channel 299C3 for Channel 299A at Woodville and the deletion of vacant Channel 300A at Clayton, Louisiana. See 58 FR 63320, December 1, 1993. With this action, this proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: Pamela Blumenthal, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 93-284, adopted June 8, 1994, and released June 17, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 94-15092 Filed 6-21-94; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 94-51, RM-8466]

Radio Broadcasting Services; Mamou and Jonesville, LA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Simla B. Ellis d/b/a SoTo Broadcasting, permittee of a new FM station, Channel 266A, Mamou, Louisiana, proposing the substitution of Channel 266C3 for Channel 266A at Mamou and modification of SoTo's authorization to

specify operation on the higher powered channel. In order to accommodate the upgrade at Mamou, we also propose to substitute Channel 286A for vacant Channel 266A at Jonesville, Louisiana. Channel 266C3 and Channel 286A can be allotted to Mamou and Jonesville, respectively, in compliance with the Commission's minimum distance separation requirements. Channel 266C3 can be allotted with a site restriction of 12.2 kilometers (7.6 miles) east to accommodate SoTo's desired site. The coordinates for Channel 266C3 are 30-39-42 and 92-17-52. The coordinates for Channel 286A at Jonesville are 31-35-38 and 91-45-23.

DATES: Comments must be filed on or before August 9, 1994, and reply comments on or before August 24, 1994.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Simla B. Ellis d/b/a SoTo Broadcasting, 1103 LaNeuveille, Lafayette, Louisiana 70508 (petitioner).

FOR FURTHER INFORMATION CONTACT:

Pamela Blumenthal, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 94-51, adopted June 3, 1994, and released June 16, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (room 239), 1919 M Street, NW., Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 94-15098 Filed 6-21-94; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 92-291; RM-8133]

Radio Broadcasting Services; Cambridge and St. Michaels, MD

AGENCY: Federal Communications Commission.

ACTION: Proposed Rule; dismissal.

SUMMARY: This document dismisses a proposal to reallocate Channel 232A from Cambridge, Maryland, to St. Michaels, Maryland, and modify the construction permit for Station WFBR(FM) to specify St. Michaels as its community of license in response to a petition filed by C.W.A. Broadcasting. See 50 FR 60782, December 22, 1992. With this action this proceeding is terminated.

FOR FURTHER INFORMATION CONTACT:

Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 92-291, adopted June 8, 1994, and released June 17, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857-3800.

List of Subject in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 94-15091 Filed 6-21-94; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 94-50, RM-8458]

Radio Broadcasting Services; Galatia, IL

AGENCY: Federal Communications Commission.

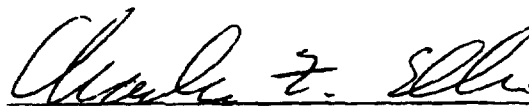
ACTION: Proposed rule.

ATTACHMENT II

Engineering Statement
Mamou, LA C3 Upgrade Rulemaking


Simla B. Ellis, d/b/a/ SoTo Broadcasting, holder of Construction Permit FCC File Number BPH930528MG for a Class A FM station licensed to Mamou, LA wishes to upgrade that allocation to FM Class C3. Table 1 demonstrates that a Class C3 would fit covering the Mamou, LA area if the Class A allocation to Jonesville, LA were not present. The Jonesville allocation has not been applied for and is currently not open for filing. Table 2 gives the details of that allocation. Table 3 demonstrates that Jonesville can be reallocated to Channel 286 Class A at the same reference coordinates as the Jonesville Channel 266A allocation. SoTo Broadcasting requests that the Jonesville Class A allocation on Channel 266 be deleted and replaced with a Class A allocation on Channel 286. Then Mamou, LA may be allotted a Class C3 on Channel 266 as is demonstrated in Table 1. Figure 1 shows the usable area for the Class C3 FM in Mamou, LA. Figure 2 demonstrates the usable area for the Class A replacement in Jonesville, LA.

Since there are presently no applications for the Jonesville, LA allocation and no window for filing has been opened, the deletion of Channel 266A and the grant of channel 286A to Jonesville, LA presents no difficulties. Similarly, the deletion of Channel 266A in Mamou, LA and the replacement with Channel 266C3 presents no difficulties. SoTo Broadcasting will immediately file a 301 Construction Permit application for the new Mamou, LA C3 allocation as soon as the details of the tower site are determined.



C. F. Ellis, PE

Engineer for SoTo Broadcasting


d/b/a SoTo Broadcasting

Parish of Lafayette)
) ss:
State of Louisiana)

AFFIDAVIT OF SIMLA B. ELLIS

I, Simla B. Ellis, being duly sworn, do
hereby depose and state as follows:

1. I am the permittee of a new FM broadcast station on Channel 266A at Mamou, Louisiana, whose call sign is KAHK(FM) and file number is BPH-930528MG. I reside at 1103 La Neuville Road, Lafayette, Louisiana, 70508.

2. I tendered a petition for rule making, proposing to amend the FM Table of Allotments to substitute Channel 266C3 for Channel 266A at Mamou, Louisiana, and requesting that the construction permit for my FM station be modified accordingly. I stated therein my intention to tender an application for modification of the construction permit for my FM station at Mamou, to propose operation on Channel 266C3. I signed the petition.

3. The technical portion of the petition was prepared by my husband, Charles F. Ellis, a broadcast technical consultant whose credentials are a matter of record with the FCC.

4. I herewith certify, at the time of filing, and as of August 9, 1994, that I had read the

original petition for rule making, including the Engineering Statement and companion Tables and Figures; that it was true and correct to the best of my knowledge, information and belief; that there were good grounds to support the petition, and that the petition was made and tendered in good faith and not interposed for delay.

5. Furthermore, I herewith certify that at the time of filing and as of August 9, 1994, it was my intention that in the event that the FCC amended its FM Table of Allotments to substitute Channel 266C3 for Channel 266A at Mamou, Louisiana, I would cause to be filed an FCC Form 301 application for modification of the construction permit for the Mamou station to specify operation on Channel 266C3, and, further, that I would cause the station, as modified, to be promptly constructed.

6. I was completely unaware of the existence and content of the Notice of Proposed Rule Making, in MM Docket No. 94-51, adopted June 3, 1994, and released June 16, 1994, ("NPRM") until Harold K. McCombs telecopied, to me and my husband, on October 4, 1994, a copy of the Report and Order in MM Docket No. 94-51, and, on October 5, 1994, the actual text of the NPRM. I was not served with a copy of the NPRM by the Commission. I did not receive a copy of the NPRM from

any other source, and I had no actual knowledge of the NPRM or its contents, prior to receiving it from Mr. McCombs.

7. I was not aware that a summary of the NPRM was published in the Federal Register on June 22, 1994. I recently read a copy of this Federal Register publication and do not understand it to have informed me of any obligation on my part to file comments with the FCC on or before August 9, 1994.

8. On or before August 9, 1994, I was not aware of the obligation to file comments restating my intention to tender an application for modification of the construction permit for my Mamou, Louisiana, FM station and to promptly construct, or to address the issues raised by footnote 1 of the NPRM. My failure to file comments was simply the result of lack of knowledge of the NPRM, and not from any disregard for FCC rules and procedures.

9. As the permittee of the FM broadcast station on Channel 266A at Mamou, Louisiana, I have always had the intent to serve the public interest of the listeners in Mamou and the surrounding area. That intent to serve the public interest includes the technical service of the station. That intent was evidenced by my filing of the petition for rulemaking to upgrade the channel. That intent continues by

instructing Mr. McCombs to prepare and file a petition for reconsideration of the Report and Order in MM Docket No. 94-51.

10. I instructed Mr. McCombs to review the FCC public files for MM Docket No. 94-51, and he advised me that there is no record that anyone tendered comments, reply comments, a counter-proposal, or any other filing in MM Docket No. 94-51. Indeed, he advises me that there was nothing in the docket, except the NPRM and the Report and Order. I was not served with copies of any comments, reply comments, counter-proposal, or other filing in MM Docket No. 94-51. Thus, it is my opinion that no one is prejudiced by reinstating MM Docket No. 94-51 and my petition for rule making, or by amending the FM Table of Allotments to substitute Channel 266C3 for Channel 266A at Mamou, Louisiana.

11. I herewith certify that as of today I have re-read the original petition for rule making, including the Engineering Statement and companion Tables and Figures; that it is true and correct to the best of my knowledge, information and belief; that there are good grounds to support the petition, and that the petition is made and tendered in good faith and not interposed for delay. Moreover, I seek reconsideration of the dismissal of the petition and

termination of MM Docket No. 94-51 in good faith and not for delay or any other purpose contrary to the public interest. I seek only to improve service to the residents of Mamou, LA and the surrounding area.

12. Furthermore, I herewith certify that it is my present intention that, in the event that the FCC amends its FM Table of Allotments to substitute Channel 266C3 for Channel 266A at Mamou, Louisiana, I will cause to be filed an FCC Form 301 application for modification of the construction permit for the Mamou station to specify operation on Channel 266C3, and, further, that I will cause the station, as modified to specify operation on Channel 266C3, to be promptly constructed.

13. I have read the foregoing "Petition For Reconsideration", and it is true and correct to the best of my knowledge, information and belief, and not interposed for delay.


Simla B. Ellis

Sworn to and subscribed to before me this 17th day of October, 1994.



Notary Public

My Commission expires; at death.

CERTIFICATE OF SERVICE

I, Harold K. McCombs, Jr., do hereby certify that I have caused to be served by hand, this 20th day of October, 1994, copies of the foregoing "PETITION FOR RECONSIDERATION" on the following:

Ms. Pamela Blumenthal
Federal Communications Commission
Room 8308
2025 M Street, N.W.
Washington, D.C. 20554


Harold K. McCombs, Jr.